

Order

Michigan Supreme Court
Lansing, Michigan

May 12, 2006

Clifford W. Taylor,
Chief Justice

128273 & (85)

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

MARY ANNE LINSELL,
Plaintiff-Appellee,
Cross-Appellant,

v

APPLIED HANDLING, INC.,
Defendant-Appellant,
Cross-Appellee.

SC: 128273
COA: 249647
Wayne CC: 01-101515-CZ

On order of the Court, the application for leave to appeal the February 8, 2005 judgment of the Court of Appeals and the application for leave to appeal as cross-appellant are considered, and they are DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

KELLY, J., concurs and states as follows:

The Court of Appeals was correct in holding that the \$100,000 cap on damages is an aggregate, rather than a per commission, maximum. It was also correct in holding that MCL 600.2961(5)(b) is ambiguous.

MARKMAN, J., concurs and states as follows:

Although the Court of Appeals correctly held that the \$100,000 cap on damages is an aggregate maximum, rather than a per commission maximum, the Court of Appeals erred in holding that MCL 600.2961(5)(b) is ambiguous. As this Court held in *In re Certified Question (Kenneth Henes Special Projects v Continental Biomass Industries, Inc)*, 468 Mich 109, 118 (2003), MCL 600.2961(5)(b) is unambiguous. MCL 600.2961(5)(b) unambiguously provides that the principal must pay the sales representative, “[i]f the principal is found to have intentionally failed to pay the commission when due, an amount equal to 2 times the amount of commissions due but not paid as required by this section or \$100,000.00, whichever is less.” That is, MCL 600.2961(5)(b) unambiguously provides for a \$100,000 cap on damages as a whole.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 12, 2006

Corbin R. Davis

Clerk